

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
APPELLATE DIVISION**

AMERICAN FURNITURE, INC.,)	
)	
Appellant,)	D.C. Civ. App. No. 1997-170
)	
v.)	Re: Terr. Ct. Civ. No. 382/1997
)	
CHRISTINE D. DAZLE-PETERSEN,)	
)	
Appellee.)	
)	

On Appeal from the Territorial Court of the Virgin Islands

Considered May 27, 1999
Filed November 3, 1999

BEFORE: **THOMAS K. MOORE**, Chief Judge, District Court of the Virgin Islands; **RAYMOND L. FINCH**, Judge of the District Court of the Virgin Islands; and **EDGAR D. ROSS**, Territorial Court Judge, Division of St. Croix, Sitting by Designation.

ATTORNEY:

Rhys S. Hodge, Esq.
St. Thomas, U.S.V.I.
Attorney for Appellant.

OPINION OF THE COURT

PER CURIAM.

American Furniture, Inc. ["American Furniture"] appeals from the Territorial Court's dismissal of its small claims debt action against Christine Dazle-Petersen ["Petersen"]. Detecting no error in the lower court's findings of fact or application of

law, we affirm.

At a July 1997 hearing on this matter, the trial court made the following findings of fact after hearing testimony from both parties, who appeared *pro se*. On December 17, 1994, Petersen purchased bedroom furniture from American Furniture with a signed personal check in the amount of \$1,299.00. At the direction of American Furniture manager Salem Salem ["Salem"], Petersen did not fill out the payee line on her check. Salem told Petersen to leave the payee line blank because he believed that the bank would honor her check since she was a police officer. According to Salem, an American Furniture employee wrote Zuhol Salem's name on the payee line of the check.

Petersen received the bedroom set from American Furniture later in the day. After unpacking the furniture, she discovered that there were defects in the bedroom set and some hardware parts were missing. On December 21, Petersen put a stop payment order on her check to American Furniture. When Zuhol Salem or some American Furniture employee deposited Petersen's check, her bank refused to honor it. The bank marked the check "insufficient," and returned it to someone at American Furniture.

For a span of three months, Petersen and Salem discussed by telephone whether she would pay for the bedroom set and whether American Furniture would repair it. Eventually, Salem reported

Petersen's nonpayment to the Internal Affairs Bureau of the Virgin Islands Police Department and her superiors. Petersen and her husband, a fellow police officer, reportedly relented at this point and obtained cash to pay American Furniture. Police officer Randolph Desusa allegedly saw Petersen's husband giving her money to pay the appellant. Petersen later testified that she paid Salem \$1,299.00 in cash for the bedroom set, and received a receipt, which she subsequently lost. Salem purportedly told her that he would locate and return her dishonored check.

At the July 1997 hearing, the trial court accepted the testimony of Petersen, her husband, and Randolph Desusa over Salem's testimony that he never received a cash payment from Petersen, gave her a receipt, or promised to return her dishonored check. The trial judge stated that she did not believe that these three witnesses, "being police officers . . . would come into court to say that money was . . . given to [Petersen], and that certain papers also were given to [her] representing receipts[, and that this testimony] is a fabrication." (See App. at 38.) The trial judge dismissed American Furniture's complaint without further discussion, and the company filed a timely appeal.

The appellant argues that the Territorial Court clearly

erred in finding that appellee paid appellant American Furniture \$1,299.00 in cash, or wrongly concluded that this payment discharged Petersen's debt to American Furniture. The Appellate Division analyzes these two contentions under different standards of review. See *Government of the Virgin Islands v. Christopher*, 990 F. Supp. 391, 393 (D.V.I. App. Div. 1997). Giving due regard to the trial judge's opportunity to determine witness credibility, we must accept the Territorial Court's findings of fact unless they are clearly erroneous. See V.I. CODE ANN. tit. 4, § 33. The legal conclusions that the Territorial Court draws from those findings, however, are subject to plenary review. See *Prosser v. Prosser*, 34 V.I. 139, 144, 921 F. Supp. 1428, 1432, (D.V.I. App. Div. 1996).

American Furniture claims that the Territorial Court could not accept the testimony offered by Petersen over that of Salem or dismiss the case because Petersen presented no documentary evidence of any cash payment to Salem. We cannot say that the trial judge's credibility determination was clearly in error. The trial court considered the parties' competing allegations, adopted Petersen's explanation of events, and explained why it found her witnesses more persuasive. Its findings of fact were amply supported by the testimony that Petersen introduced at trial. Since the trial court's findings were not "completely

devoid of minimum evidentiary support displaying some hue of credibility," and bore a "rational relationship to the supportive evidentiary data," there was no clear error. See *Stridiron v. I.C., Inc.*, 20 V.I. 459, 462-63, 578 F. Supp. 997, 999 (D.V.I. App. Div. 1984).

Having found that Petersen paid her debt in cash, the Territorial Court properly dismissed American Furniture's complaint. Virgin Islands law provides that "[t]he liability of any party [on a draft] is discharged to the extent of his payment . . . to the holder [of the draft]." See 11A V.I.C. § 3-603. Contrary to the appellant's assertion, the payee need not cancel and surrender the drawer's check to discharge the debt; payment provides the drawer with a defense to the check's enforcement and extinguishes the underlying debt.¹ Although the trial court could have explained these legal precepts to the parties, we are satisfied that, in the context of a small claims case in which both parties appeared *pro se*, her concise finding that there was no debt warranted dismissal of the appellant's claim. A more complex explanation was not necessary to achieve "substantial

¹ See *id.* The appellant's argument appears to be based on section 3-605 of Title 11A, Virgin Islands Code, which provides that the holder of a draft may discharge a debtor "by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged." See 11A V.I.C. § 3-605(1)(b). This requirement applies only to transactions that do not involve payment. See *id.* § 3-605(1).

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justice." See TERR. CT. R. 64. The Territorial Court's order of dismissal will be affirmed.

DATED this 3rd day of November, 1999.

ATTEST:
ORINN ARNOLD
Clerk of the Court

By:_____/s/_____
Deputy Clerk

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ATTORNEY:

Rhys S. Hodge, Esq.
St. Thomas, U.S.V.I.
Attorney for Appellant.

ORDER OF THE COURT

AND NOW, this 3rd day of November, 1999, having considered the parties' submissions, and for the reasons set forth in the Court's accompanying Opinion of even date, it is hereby

ORDERED that the trial court's dismissal order is **AFFIRMED**.

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ATTEST:

ORINN ARNOLD
Clerk of the Court

By: _____/s/_____
Deputy Clerk

Copies to:

Judges of the Appellate Panel
Honorable Geoffrey W. Barnard
Honorable Jeffrey L. Resnick
Judges of the Territorial
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